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No. 35.

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Supreme Court of the United States.

OCTOBER TERM, 1900.

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THE YAZOO AND MISSISSIPPI VALLEY RAILROAD COMPANY ET AL.,
Plaintiffs in error,
vs.
WIRT ADAMS, State Revenue Agent.

In error to the Supreme Court of the State of Mississippi.

BRIEF FOR PLAINTIFFS IN ERROR ON REHEARING.
(AS TO THE TAXES FOR THE YEAR 1892.)

WILLIAM D. GUTHRIE,
J. M. DICKINSON,
EDWARD MAYES,
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For plaintiffs in error.

WASHINGTON, March 16, 1901.

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The court rested the decision of this case rendered January 7, 1901, upon the effect of the consolidation of October 24, 1892 (180 U. S. 1), and, assuming all the taxes in the suit to have accrued after the consolidation, the opinion did not pass upon the original validity of the contract rights of exemption or commutation claimed on behalf of the plaintiffs in error. The record, however, shows (p. 2) that the taxes for the year 1892, which make up part of the judgment affirmed, had been completely levied and assessed on September 22, 1892, and that the claim of the state had fully accrued at least one month before the articles of consolidation were executed. This appears from the declaration of the defendant in error, for it is alleged (p. 2):

> "The said assessment being completed after objections heard on September 22nd, 1892."

The judgment therefore gives to the consolidation of October 24, 1892, a retrospective effect.

The question is of vital importance to the plaintiffs in error, and the amount involved greatly exceeds one year's taxes, because, as the court knows, suits have been brought to recover the taxes prior to the consolidation,[1] and it may well be held in those suits, under the doctrine of *New Orleans* v. *Citizens Bank*, 167 U. S. 371, and *Baldwin* v. *Maryland*, 179 U. S. 220, that the decision in the case at bar constitutes *res judicata* because taxes which had been assessed and had accrued prior to the consolidation were involved.

The liability in this action of both the Yazoo and Mississippi Valley Company and the Illinois Central Company for the taxes of 1892 is predicated upon the allegation that these companies "by taking said property and railroad of said Louisville, New Orleans & Texas Railway Company became liable for its debts and obligations and liabilities and did in fact agree to and did assume and promise to pay all said debts, obligations and liabilities of whatever kind or character" (record, pp. 5, 6). This allegation is without meaning if the taxes in question did not constitute a corporate debt or obligation of the L., N. O. & T. Company at the time of the consolidation (October 24, 1892), which might then be paid and discharged. As matter of fact, the obligation was then not only a lien as of February 1, 1892, but payable October 1, 1892, (sections 3746, 3794*a*, 3801 of the Mississippi Code of 1892, *infra*, p. 3, appendix, p. XIII), and being so payable, it is difficult to see why the right of exemption or commutation under the charter had not

[1] *Illinois Central Railroad Co.* v. *Adams*, 180 U. S. 28, 29, 40; *Yazoo and Mississippi R'd Co.* v. *Adams*, 180 U. S. 41, 42.

already attached and become vested. If the taxes did not constitute an obligation of the L., N. O. & T. Company at the time of the consolidation, the record contains no allegation or evidence showing that the Yazoo Company (the consolidated company) became liable for them. In other words, the case, so far as concerns the taxes of 1892, depends wholly upon the fact that before the consolidation, "the assessments being completed," these taxes had become "debts" or "obligations" of the company which was entitled to the right of exemption or commutation. If any right then existed in respect of these accrued taxes, whether of exemption or appropriation, it was a vested right which was not lost by the consolidation.

In the brief in opposition to the motion for a rehearing, the defendant argued, in regard to the *ad valorem* taxes that, because the plaintiffs in error had until the 15th day of December in which to pay their taxes without having their property distressed and sold, therefore "the effect of the consolidation on October 24, 1892, is exactly the same as if a valid law had been passed on that date repealing the exemption and prohibiting the sheriffs and tax collectors from *thereafter* receiving the affidavits in lieu of money for the taxes" (p. 4). This argument, however, quite overlooks the fact that the taxes for 1892 were assessed and became a lien on the property as of February 1, 1892. This clearly appears from the following provisions of the Mississippi code:

> "Sec. 3746. *Taxes a lien, from what date* (Laws 1884, p. 16). Taxes, both state and county, assessed upon lands or personal property, shall bind the same, and be entitled to preference over all judgments, executions, incumbrances, or liens, whensoever created; and all taxes assessed shall be a lien upon and bind the property assessed, from the first day of February of the year in which the assessment shall

be made; and no property shall be exempt from distress and sale for taxes. And it shall not be necessary to the validity of an assessment, or of a sale of land for taxes, that it shall be assessed to its true owner; but the taxes shall be a charge on the land or personal property taxed, and the sale shall be a proceeding against the thing sold, and shall vest title in the purchaser, without regard to who may own the land or other property when assessed or when sold, or whether wrongfully assessed, either to a person, or to the state, or any county, city, town, or village, or subdivision of either."

"Sec. 3748. *What date fixes liability to taxation.* All taxable property brought into the state or acquired or held by any person before the first day of February shall be assessed, and taxes thereon paid for the current year."

As the declaration itself averred, the assessment was "completed after objections heard on September 22nd, 1892" (record, p. 2); that is to say, the tax became fixed and determined on that date. The tax became actually collectible on October 1, 1892, the date upon which the assessment rolls were delivered to the tax collector (code, sec. 3794*a*; app., p. XIII). The duty of the tax collector upon receipt of the assessment rolls is prescribed by sec. 3801 of the code as follows:

"Sec. 3801. *Collection of taxes.* On receipt of the assessment-rolls the collector shall immediately proceed to collect the taxes, adding the county tax due by each person to his state tax, and collecting all together; and it shall be the duty of every person assessed to pay his taxes to the collector on or before the fifteenth day of December."

If the affidavits had been tendered on October 1, or at any time up to October 23, 1892, it would clearly have been the duty of the tax officers to accept them. The period between October 1 and December 15 constituted merely a period of grace in which payment could be made

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at the convenience of the taxpayer. Nothing remained to be done in order to complete the obligation; and the only relation which the date of December 15 had to the matter was that upon that date it would become the duty of the tax collector to collect the tax forcibly by distress and sale (code, sec. 3802). It will therefore, be seen that the claim that the consolidation of October 24, 1892, deprived the plaintiffs in error of the right to tender the affidavits, rests upon nothing more substantial than a mere delay in presenting them. Such a claim must be entirely untenable. The correct theory is that as soon as the tax became actually payable, that is, on October 1, 1892, after the completion of the assessment and the receipt of the assessment rolls by the tax collector, the right to the exemption by means of a tender of the affidavits accrued and became vested. The rights both of the state and of the railroad company became fixed on that date; and, assuming that the law under which the right accrued was valid, no subsequent law could have deprived the plaintiffs in error of that vested right, and certainly it was not lost by consolidation. As to the privilege taxes, first assessed in 1892, there is additional reason for relieving the plaintiffs in error. Both the constitution of 1869 and that of 1890 dealt with the taxation of the *property* of corporations. But under the settled law of Mississippi, there is a clear distinction between taxes upon property and taxes upon privileges. *Vicksburg Bank* v. *Worrell*, 67 Miss. 47, 57.

Indeed, in the court below, the argument of one of the counsel for the revenue agent (77 Miss. at p. 224), expressly recognizes that the point was made, and this conclusively shows that the present suggestion is not an afterthought. All that can be said is that as the court

below held the contract invalid *ab initio*, counsel directed all the argument to meeting that contention.

It is, therefore, submitted that any rights in respect of the taxes of 1892 were not lost or surrendered or waived by the consolidation.

I.

THE VALIDITY OF THE CHARTER CONTRACT.

The point now presented is whether exemptions of property or commutations of taxes could be granted by the legislature of Mississippi under article XII. of the state constitution of 1869.

The power to exempt under that constitution has been repeatedly adjudged in the courts of Mississippi in a series of cases beginning with *Mississippi Mills* v. *Cook*, 56 Miss. 40 (1878). Mr. Justice Brown in the opinion in the case at bar said (*Yazoo and Mississippi V. R'y. Co.* v. *Adams*, 180 U. S. at p. 22):

> "In cases arising under the Mississippi constitution of 1869, the method adopted in the charter of the Mobile and Northwestern Company of cummuting the taxes was originally sustained under the theory that the provision of that constitution declaring 'the property of all corporations for pecuniary profits shall be *subject* to taxation, the same as that of individuals,' did not mean that it should be necessarily *subjected* to taxation, but that it might be exempted altogether by the legislature. *Mississippi Mills* v. *Cook*, 56 Missisippi 40. But by the constitution of 1890, 'all existing charters or *grants of corporate franchises* under which organizations have not in good faith taken place at the adoption of this constitution, shall be subject to the provisions of the article,' one of which was (section 181) that 'the property of all private corporations for pecuniary gain shall be taxed in the same way and to the same extent as property of individuals.'"

Since the original decision in this court, the Supreme

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Court of Mississippi, in the case of *Wirt Adams, State Revenue Agent*, v. *Tombigbee Mills*, decided February 18, 1901, has again upheld the power of the legislature of Mississippi to grant exemptions under the constitution of 1869. The opinion is written by Whitfield, C. J., who also wrote the opinion in the case at bar, and, among other things, he draws a distinction between that case and the case at bar by emphasizing the fact that in the *Tombigbee Mills* case the corporation had not lost its exemption by consolidating with any other corporation. The opinion also attempts to distinguish the two cases on other grounds. A copy of this recent opinion is filed herewith. The following extract from the opinion will be interesting. Referring to the act of 1882, exempting factory property from taxation, under which the exemption involved in that case was granted, the court said:

> "It does not select certain persons or certain corporations, and seek invidiously to extend to them special privileges denied to all others. But in furtherance of a great and just public policy, always cherished in this State—namely, the establishment of cotton factories for the consumption of the product on which our material wealth rests—it did, as under the constitution of 1869 it might do, select certain kinds of property, whether owned by individuals or corporations, and exempted that selected property from taxation. Manifestly this exemption contained in the said Act of 1882 was valid, and it is clear it has never been repealed and it was not sought to be made irrepealable. This appellee never lost its exemption by consolidating with any other corporation. It has always retained 'the precise corporate existence' it originally had. Its exemption was, therefore, continued by Sec. 181 of the constitution of 1890, subject to legislative repeal. But it has never been repealed. The legislation, with respect to railroads and cotton factories, under this Act as to this matter of exemption, is materially different as to the

legislative repeal. Section 182 of the constitution of 1890 expressly authorized exemptions from taxation of manufactories and other new enterprises of public utility, for five years from the date of the charter in the case of a corporation, and from the commencement of the work in the case of individual enterprises; but no such provision was made for railroads. And section 3744, subdivision (v) of the Code of 1892, passed in pursuance of section 182 of the constitution of 1890, provides for these exemptions as to manufactories of various kinds. Here is both constitutional and legislative recognition of the exemption in this case as still existing. For it would be obviously absurd for the Legislature to enact said subdivision (v) of section 3744, offering this five years' exemption to cotton factories for the future, and at the same time repeal the sort of an exemption we have before us here. That would be 'keeping the word of promise to the ear, but breaking it to the hope.' Individuals and corporations would distrust as to the future if an exemption like this, validly granted, under general law, and on the faith of which appellee has invested its money, should be repealed. But a very different state of case existed as already pointed out, as to the exemption denied in *Y. & M. V. R. R. Co.* v. *Adams*, 77 Miss. 194. There the exemption was void in its origin, being a special grant by a special Act to a special corporation. And that exemption was repealed. It is not at all difficult to see the wisdom of the public policy which makes the discrimination between the exemption here and that in *Y. & M. V. R. R. Co.* v. *Adams*."

But apart from this recent adjudication, it must be very clear that, considered in itself and in connection with the subject matter of the enactment, the provisions of section 21, providing for the exemption from or commutation of taxes on this railroad property, constituted a valid contract between the state and the railroad company, if not prohibited by the state constitution. The consideration is ample, and the terms of the agreement are plain and enforceable. In the absence of any

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limitations imposed by the state constitution then in force, there was no restraint upon the power of the state legislature to make the contract, nor upon the right of the incorporators of the railroad company to accept, rely and insist upon its benefits. And if the contract was valid when made and had not been waived or terminated at the date of the consolidation, its obligation is protected by the Federal Constitution from impairment as to all rights accrued prior to the consolidation. It is, of course, now a settled rule of constitutional law that any stipulation respecting taxation contained in the charter of a corporation, whether constituting a grant of state or municipal funds, or providing for an appropriation or commutation of taxes, or for an entire exemption of the corporate property or stock, must be construed as an inviolable contract under the protection of the Constitution of the United States, if not in conflict with the existing state constitution, and that it cannot be revoked by any subsequent legislation, or even by an amendment of the state constitution (*State Bank of Ohio* v. *Knoop*, 16 How. 369, 378; *Home of the Friendless* v. *Rouse*, 8 Wall. 430, 435; *Wilmington Railroad* v. *Reid*, 13 Wall. 264, 266; *Humphrey* v. *Pegues*, 16 Wall. 244, 249; *Trask* v. *Maguire*, 18 Wall. 391, 401; *Pacific Railroad Company* v. *Maguire*, 20 Wall. 36, 43; *Erie Railway Company* v. *Pennsylvania*, 21 Wall. 492, 498; *New Orleans Gas Co.* v. *Louisiana Light Co.*, 115 U. S. 650, 664; *Grand Lodge* v. *New Orleans*, 166 U. S. 143, 146).

The form of the legislative contract in suit (first adopted in the legislation of Mississippi on July 20, 1870, laws 1870, ch. 124, sec. 21, immediately after the adoption of the constitution of 1869), is as follows (record, p. 40, appendix, p. 11):

"Section 21. Be it further enacted, That in consideration of the construction of the railroads provided for herein, and of the great benefit which the State will receive in the development of its agricultural resources by means of said railroads as works of internal improvement, and also of the increased value which will thereby be added to the property of the State, thus enabling the State to greatly increase its revenue without additional and burdensome taxation on the people, the State hereby agrees with said company (and which agreement is irrepealable), that all taxes to which said company shall be subject for the period of thirty years, are hereby appropriated and set apart, and shall be applied to the payment of the debts and liabilities which the said company may have incurred in the construction of said road, or for money borrowed by said company upon lands or otherwise, to be used in constructing said road, or paying debts incurred by said company in constructing the same; and it shall be the duty of the tax collector in every county, in each and every year, to give to said company a receipt in full for the amount of said taxes upon receiving from said company an affidavit made by the president or cashier of said company that the amount of said taxes have actually and in good faith been paid and applied by said company during the year, in payment of the debts incurred, or money borrowed as aforesaid, and which receipt shall be in full of all taxes, county, State and municipal, to which said company shall be subject. Provided, however, that whenever the profits of said company shall enable it to declare and pay to the stockholders an annual dividend of eight per cent. on its capital stock over and above the payment of its debts and liabilities, then the appropriation of the taxes aforesaid shall cease, and said taxes shall be paid by said company to the tax collector, to be by him paid over as required by law."

Whether the provisions of this section 21, constituting a part of the charter of the L., N. O. & T. Company (as explained in 180 U. S. at pp. 9–11) are to be considered as conferring an absolute exemption or as

creating a right of commutation of taxes, that right of exemption or commutation was a valid grant within the constitutional power of the legislature, which had already attached to the taxes for the year 1892 prior to the consolidation of October 24, 1892.

If, instead of this form of contract, the state had agreed to accept in payment of taxes upon this railroad for a certain period and upon certain conditions bonds or coupons issued by the railroad company for the purpose of securing additional funds to complete the construction of this public improvement, there could be little question that this would constitute a valid contract and that the railroad company or the bondholder could enforce it. Similar provisions in bank charters that their notes shall be receivable in payment of taxes have been held to constitute valid and irrepealable contracts with the holders of such notes, and the doctrine is now well settled (*Woodruff* v. *Trapnall*, 10 How. 190, 205; *Furman* v. *Nichol*, 8 Wall. 44, 59; *Keith* v. *Clark*, 97 U. S. 454; *Virginia Coupon Cases*, 114 U. S. 270, 279). There was no inhibition of such grants in the Mississippi constitution of 1869, nor is there even in that of 1890. The Supreme Court of Mississippi has repeatedly declared the doctrine that the building of a railroad is a public use, and that taxes may be voted and levied in aid of such a public improvement (*Brown* v. *Beatty*, 5 George 227, 240; *Hawkins et al* v. *Carroll Co.*, 50 Miss. 735, 757; *New Orleans, &c., R. R. Co.* v. *McDonald*, 53 Miss. 240, 245; *Miss. Const.* 1869, Art. 12, Sec. 14). The same rule has always been held in this court, and now generally prevails throughout this country (*Rogers* v. *Burlington*, 3 Wall. 654, 663; *Thomson* v. *Lee County*, 3 Wall. 327, 330; *Mitchell* v. *Burlington*, 4 Wall. 270, 273; *Railroad Company* v. *County of Otoe*, 16 Wall. 667,

672; *Olcott* v. *The Supervisors*, 16 Wall. 678, 694; *Sharpless* v. *Mayor of Philadelphia*, 21 Pa. St. 147, 169; *Thomas* v. *Leland*, 24 Wend. 65, 68; *Napa Valley R. R. Co.* v. *Napa Co.* 30 Cal. 435, 436; *Stein* v. *Mayor of Mobile*, 24 Ala. 591, 614).

II.

THE HISTORY OF EXEMPTIONS, &C., UNDER THE CONSTITUTION OF 1869.

For many years prior to the adoption of the Mississippi constitution of 1869, it had been customary for the legislature in granting corporate charters to expressly reserve the right or power to tax the property of the corporations thus created (see pp. X-XII of appendix). The framers of the constitution of 1869, with intent to make this reservation of power applicable generally to all corporations, declared that corporate property should be "subject to taxation the same as that of individuals;" but that constitution did not contain any inhibition of general or specific exemptions of corporate property—much less of legislative contracts for commutation of taxes. For twelve years prior to the granting of the charter here in question—that is, continuously after the adoption of the constitution of 1869—and for twenty years prior to the constitution of 1890, it had been the practice of the legislature to grant to corporations absolute exemptions from taxation. One hundred and twenty such exemptions were granted during the period between 1870 and 1890 (see pp. V–IX of appendix). In addition to such absolute exemptions, the legislature had, prior to applying the provisions of section 21 to the L., N. O. & T. Company, granted more than fifty corporate charters containing agreements for the commutation or appropriation of taxes similar to that involved in the present case (*id.* pp. III–V), which form of contract has been held by

the court below to be the equivalent to an exemption. At any rate, if not equivalent to an exemption, these agreements constitute valid contracts for the commutation or appropriation of taxes.

As early as 1878, four years before the granting of the charter in suit, the Supreme Court of Mississippi in the case of *Mississippi Mills* v. *Cook*, 56 Miss. 40, 52, construing the provisions of section 13 of article XII. of the constitution of 1869, determined that this section did not of itself prohibit exemptions, but only declared the liability of corporations to taxation in the discretion or judgment and subject to the control of the legislature. This authoritative construction of the constitution, subsequently reiterated in *Railroad Company* v. *Lambert*, 70 Miss. 779 (*vide* 180 U. S. at p. 13), became as much a part of the constitution of 1869 as the text itself (*Douglass* v. *County of Pike*, 101 U. S. 677). And that this construction of the meaning of the constitution of 1869 was not strained or unreasonable is shown by the legislation of Mississippi for many years prior to the adoption of that constitution, from which it appears that the legislature, when granting charters of incorporation, had often thought it necessary to provide that the corporations should be "subject to taxation," the terms of the provisions being either precisely like those adopted in the constitution of 1869, or having the same effect in substance. The construction adopted in *Mississippi Mills* v. *Cook*, therefore, involved no departure or change or new rule in regard to corporate taxation. It simply recognized that the constitution made that general which before had been special, and embodied this common provision of liability to taxation, instead of leaving it to be dealt with by changing legislatures in each particular case. Many of these old acts are referred to in the appendix

(pp. x–xii), and contain most persuasive evidence of the meaning which was generally attributed in the legislation of Mississippi to the clause under consideration when the constitution of 1869 was adopted. The rule was analogous to that laid down in Massachusetts and Pennsylvania, where the property of railroad and other companies serving a public purpose has been held not subject to taxation under general statutes (*Inhabitants of Worcester* v. *The Western Rail Road Corporation*, 4 Metc. 564, 566; *Lehigh Coal and Navigation Company* v. *Northampton County*, 8 W. & S. 334, 338). The framers of the constitution of 1869 undoubtedly intended to subject all corporations to the power of taxation under the general tax laws, but with discretion in the legislature to grant repealable or limited exemptions, as theretofore had been the constant practice.

Moreover, this was the uniform and consistent practice of the legislature. Thus, at almost every session held between the adoption of the constitution of 1869 and the adoption of the constitution of 1890, exemptions from taxation were granted, not only to railroad companies, but to other corporations for profit which were supposed to serve in some sense a public purpose. The acts granting these exemptions are referred to in the appendix (pp. v–ix), and exhibit a fixed and consistent course of legislation upon this subject. Some idea of the extent of this policy of exemption may be formed from the numerous examples cited. These acts surely amount to a legislative construction of the highest authority respecting the true meaning of this portion of the constitution of 1869, and ought to receive much weight in determining not only the proper interpretation of the constitution of 1869, but what the exemptions were which the constitution of 1890 intended to ratify and continue.

The same view of the validity of these exemptions prevailed in the other departments of the state government. The executive officers of the state, including its law officers, uniformly, for fully twenty years, adopted the same construction and consistently acted upon it. In the judicial department the decision in *Mississippi Mills* v. *Cook*, *supra*, was followed without break for twenty years, as will be seen by reference to the following cases involving, in one way or another, the question of the constitutionality of exemptions under the constitution of 1869: *McCulloch et al.* v. *Stone*, 64 Miss. 378; *Y. & M. V. R. R. Co.* v. *Thomas et al.*, 65 Miss. 553; *Vicksburg Bank* v. *Worrell*, 67 Miss. 47; *Attala County* v. *Kelly*, 68 Miss. 40; *L., N. O. & T. Ry. Co.* v. *Taylor*, 68 Miss. 361; *Railroad Co.* v. *Lambert*, 70 Miss. 779. And this is again strikingly reiterated in the recent opinion in the *Tombigbee Mills* case.

This long-continued practice of the legislative, executive and judicial departments ought to be most convincing as to the legality of these exemptions. No rule of interpretation is better settled in this court than that which gives the greatest weight to such practice and interpretation. In *The Laura*, 114 U. S. 411, 416, Mr. Justice Harlan, citing *Stuart* v. *Laird*, 1 Cranch, 299, 308, said:

> "Touching the objection now raised as to the constitutionality of the legislation in question, it is sufficient to say, as was said in an early case, that the practice and acquiescence under it, 'commencing with the organization of the judicial system, affords an irresistible answer, and has indeed fixed the construction.'"

And in *Ogden* v. *Saunders*, 12 Wheat. 213, 290, Mr. Justice Washington said that the doctrine—

> "proceeds upon the presumption, that the cotem-

> poraries of the constitution have claims to our deference on the question of right, because they had the best opportunities of informing themselves of the understanding of the framers of the constitution, and of the sense put upon it by the people when it was adopted by them."

In view of the fact that the investment by stockholders and creditors of the railroad company was clearly made in reliance upon this established practice as to exemptions and of the authoritative interpretation of the highest court of the state affirming the constitutional power to exempt, the following language of Mr. Justice Swayne in *Township of Pine Grove* v. *Talcott*, 19 Wall. 666, 677, is singularly applicable:

> "When the bonds were issued, there had been no authoritative intimation from any quarter that such statutes were invalid. The legislature affirmed their validity in every act by an implication equivalent in effect to an express declaration. And during the period covered by their enactment, neither of the other departments of the government of the State lifted its voice against them. The acquiescence was universal."

See, also, *Briscoe* v. *The Bank of the Commonwealth of Kentucky*, 11 Pet. 257, 318; *Prigg* v. *The Commonwealth of Pennsylvania*, 16 Pet. 539, 619; *Cooley* v. *Board of Wardens of Port of Philadelphia et al.*, 12 How. 299, 315; *Auffmordt* v. *Hedden*, 137 U. S. 310, 329; *Schell's Executors* v. *Fauché*, 138 U. S. 562, 572; *Field* v. *Clark*, 143 U. S. 649, 691; *McPherson* v. *Blacker*, 146 U. S. 1, 27; *Kennedy* v. *Gies*, 25 Mich. 83, 92. The Mississippi authorities are to the same effect: *Daily* v. *Swope, Guardian, etc.*, 47 Miss. 367, 383; *French* v. *The State*, 52 Miss. 759, 762; *Shotwell* v. *Covington*, 69 Miss. 735, 738; *Chrisman* v. *Brookhaven*, 70 Miss. 477, 483.

As Simrall, J., said in *Hawkins et al.* v. *Carroll Co.*, 50 Miss. 735, 752 (1874):

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"At the time of the adoption of the constitution, the power of the legislature to authorize municipal aid to these enterprises, coupled with the delegated authority of taxation, was well established, both by legislative precedents and judicial decisions in this and the other states."

And Mitchell, J., said in *State* v. *Luther*, 56 Minn. 156, 164:

"This amounted to a legislative construction of the constitution, which of itself would be entitled to great weight."

The Supreme Court of California said in *Emery* v. *Reed*, 65 Cal. 351:

"We have frequently said that, with respect to laws passed under the late Constitution, the construction put upon them by the highest court in existence under it, would be accepted by us without regard to our own views in respect to the correctness or incorrectness of that construction."

It only remains to consider whether there is any sound ground of distinction, *under the constitution of 1869*, between an exemption from taxation of a railroad and an exemption of cotton factories. Indeed, it may well be doubted whether cotton factories are public concerns in any such sense as would justify their exemption from taxation or any appropriation of taxes for their support. *Loan Association* v. *Topeka*, 20 Wall. 655; *The State* v. *Osawkee Township*, 14 Kansas 418. On the other hand, a railroad is an indisputable public enterprise in aid of which exemptions may be granted or taxes voted.

The position of the court below in the *Tombigbee Mills* case is that the legislature could *exempt* by general act, but could not exempt by special act. In other words, had the exemption or appropriation in suit been applicable to all railroads, it would have been valid; but it becomes invalid because it is a special act limited

to one railroad. The position evidently is that the greater power to exempt all railroads does not include the lesser power to exempt any particular railroad. No such distinction, it is submitted, finds authority in the constitution of 1869 or any reason in the nature of the subject matter. The constitution warrants no such classification. What provision of the constitution of 1869 declared that the legislature might exempt cotton factories, but could not exempt railroads? What provision of that instrument declared that railroads could be exempted as a class, but could not be exempted in particular cases? Concede the power to exempt at all—cotton factories or railroads whether belonging to corporations or individuals—and it logically follows that any railroad may be exempted if the public good so requires. The argument in support of the power to exempt mills and factories, but not to exempt a railroad unless all railroad property were included, would reduce the constitutional rule to a mere question of method. Railroads are never identical in situation, character, route or terminus. Each railroad is *sui generis*. Each touches different points of country, is built under different conditions, tends to foster and develop different interests. It should indeed require very plain language in a constitution to evidence an intention to permit an exemption of *all* railroads, but to prohibit an exemption of any one, no matter how differently situated from the other railroads of the state. Yet such an extreme and practically illogical result is what the opinion in the *Tombigbee Mills* case would seem to indicate.

The Mississippi court, in sustaining the exemption involved in the *Tombigbee Mills* case, speaks of the "furtherance of a great and just public policy, always

cherished in this state—namely, the establishment of cotton factories." But this is a relatively small consideration when compared with the overshadowing necessity of securing the construction of railroads, which was then impossible without outside capital, (see brief filed on original argument, pp. 2–5). Without the railroads, the benefit to be derived from the establishment of the factories would be minimized. The act involved in the *Tombigbee Mills* case was passed in 1882, the same year in which the charter here involved was granted, and after the passage of laws under the constitution of 1869, providing for exemption or commutation of taxes in respect of at least forty-five railroads. The state desired to accomplish the necessary railroad construction without taxing the community. The legislature proposed to capitalists and contractors and materialmen and all others who might assist in the construction of the road and receive in return the company's promise of payment that, to the extent of the taxes receivable from the new property created with their funds, it would forego or exempt, provided those taxes were applied to the repayment of their advances. It was on the faith of this promise not only that the railroad corporation itself undertook the construction of the road and invested its capital, but that its creditors risked their funds, their materials and their labor, and it is simply common honesty, as it is to the true interests of the state itself, to perform the obligation in good faith. No state has ever profited by the repudiation of its plighted faith. As Mr. Justice Field said in *Hartman* v. *Greenhow*, 102 U. S. 672, 682:

> "There is no wealth or power equal to that which ultimately comes to a State when in all her engagements she keeps her faith unbroken."

III.

The express ratification contained in the constitution of 1890.

At the time of the adoption of the constitution of 1890, the validity of exemptions was so firmly established in Mississippi that there can be no reasonable doubt as to what the common understanding of the framers of the constitution was upon the subject. That constitution provided (section 181):

> "*Exemptions from taxation to which corporations are legally entitled at the adoption of this constitution, shall remain in full force and effect for the time of such exemptions as expressed in their respective charters, or by general laws, unless sooner repealed by the legislature.*"

It is clear that this provision of the new constitution was intended to apply to and preserve exemptions such as that involved in the case at bar, from the fact that, except in the case of two or three small private schools, altogether insignificant in the fiscal system of the state, there were in 1890 no corporations entitled to exemptions which had been granted prior to 1869. Exemptions had been commonly granted before that time, but they had either never been availed of, or had terminated by expiration of the period for which they were granted, or had lapsed for other cause.[1] Practically all corporate exemptions, therefore, such as are mentioned in section 181 of the new constitution, must necessarily have been granted under the constitution of 1869, nearly all of which were to particular railroad corporations, and these were the exemptions which the framers of the constitution of 1890 had in mind and which they intended to protect in good faith.

[1] The exemption of the Mobile and Ohio Railroad Company had been surrendered in 1882 in consideration of a release by the state of a debt due it from the company, amounting to over $300,000. (Appendix Senate Journal, 1882, Governor Lowry's message.)

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The use of the word *legally* was not intended to deprive the section of all practical force and effect or to conceal a snare.

In *State* v. *Luther*, 56 Minn. 156, 164, it appeared that after a continuous course of legislation in respect to commuted taxation upon corporations, which was said to amount to "a legislative construction of the constitution, which of itself would be entitled to great weight," a constitutional amendment was adopted providing for the submission of any law for the repeal of such statutes respecting commuted taxation to a vote by the people. Mitchell, J., said:

> "This language must have been selected and this amendment adopted with reference to the existing legislation and the general legislative policy to which we have referred; and, read and construed in that light, it amounts to a clear recognition of the validity of existing laws providing for this commuted system of taxation of railroad property and lands, and of legislative power to enact such laws for the future. If it did not refer to this, there was nothing to which it could refer. It is, by necessary implication, a validation of past legislation of that kind, and a grant of power to enact it in the future."

As the legality of exemptions in Mississippi under the constitution of 1869 had been declared and upheld prior to 1890 by at least four decisions of the highest tribunal of the state (now reaffirmed by that court), the constitution of 1890, therefore, referred to a class of exemptions sanctioned by the legislative practice of many years under the constitution in force, permitted by the universally accepted construction of that constitution, and confirmed and declared by the highest state court. These were the exemptions "to which corporations are legally entitled." The language of section 181 fairly applies to no other subject-matter.

No more persuasive union of all canons of constitutional construction and interpretation can well be imagined than are found in this case as to the legislative power to grant exemptions—namely, (1) a common course of legislation evincing the universally entertained view of corporate liability to taxation, and recognizing the necessity for providing that corporations should be "subject to taxation," which view continued for many years; (2) the adoption of that view of liability to taxation in the constitution of 1869; (3) a judicial inquiry into the validity of claims for exemption and a judicial declaration of their validity; (4) a common and long-continued legislative recognition, under the constitution of 1869, of the legality of the exemptions and repeated refusals by the legislature to repeal such exemptions; (5) a continuous acquiescence by the executive department and by those charged with the collection of taxes; and (6) a subsequent constitution, dealing with existing exemptions, necessarily created under the constitution of 1869, and confirming those to which corporations were "legally entitled." In truth, the convention which adopted the constitution of 1890 could not have declared more plainly that it meant to confirm and continue such exemptions as that claimed by these plaintiffs in error if it had specifically named and included them in that instrument.

The decision of the Supreme Court of Mississippi in the *Tombigbee Mills* case, decided February, 1901, not only reiterates and reaffirms the doctrine of the *Mississippi Mills* case that the power to exempt existed under the state constitution of 1869, but holds that such exemptions were continued in force by the constitution of 1890. This recent decision emphasizes the point urged on the original argument that the rule of exemption declared

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in the *Mississippi Mills* case in 1878 may justly be said to constitute a part of the contract relied on by the plaintiffs in error.

CONCLUSION.

As the obligation of the charter contract of exemption is clearly impaired by the subsequent state legislation of 1892 and 1894 (180 U. S., at pp. 12, 14), under the authority of which, and not otherwise, the state revenue agent has prosecuted the suits resulting in the judgment now under review, it is submitted that such legislation conflicts with the contract clause of the constitution of the United States, and is void. The judgment below should, therefore, be reversed as to the taxes of 1892, which accrued prior to the consolidation act of October 24, 1892.

Washington, March 16, 1901.

WILLIAM D. GUTHRIE,
J. M. DICKINSON,
EDWARD MAYES,
NOEL GALE,
For plaintiffs in error.

APPENDIX.

A.

Constitutional provisions involved.

CONSTITUTION OF 1869.

ARTICLE XII., SEC. 13. The property of all corporations for pecuniary profits shall be subject to taxation the same as that of individuals.

SEC. 20. Taxation shall be equal and uniform throughout the State. All property shall be taxed in proportion to its value, to be ascertained as directed by law.

CONSTITUTION OF 1890.

SECTION 181. The property of all private corporations for pecuniary gain shall be taxed in the same way and to the same extent as the property of individuals, but the legislature may provide for the taxation of banks and banking capital by taxing the shares according to the value thereof (augmented by the accumulations, surplus, and unpaid dividends), exclusive of real estate, which shall be taxed as other real estate. Exemptions from taxation to which corporations are legally entitled at the adoption of this constitution, shall remain in full force and effect for the time of such exemptions as expressed in their respective charters, or by general laws, unless sooner repealed by the legislature. And domestic insurance companies shall not be required to pay a greater tax in the aggregate than is required to be paid by foreign insurance companies doing business in this state, except to the extent of the excess of their ad valorem tax over the privilege tax imposed upon such foreign companies; and the legislature may impose privilege taxes on building and loan associations in lieu of all other taxes except on their real estate.

SECTION 182. The power to tax corporations and their property shall never be surrendered or abridged by any contract or grant to which the state or any political subdivision thereof may be a party, except that the legislature may grant exemption from taxation in the encouragement of manufactures and other new enterprises of public utility extending for a period not exceeding five years, the time of such exemptions to commence from date of charter, if to a corporation; and if to an individual enterprise, then from the commencement of work; but when the legislature grants such exemptions for a period of five years or less, it shall be done by general laws, which shall distinctly enumerate the classes of manufactures

and other new enterprises of public utility entitled to such exemptions, and shall prescribe the mode and manner in which the right to such exemptions shall be determined.

SEC. 258. The credit of the state shall not be pledged or loaned in aid of any person, association, or corporation; and the state shall not become a stockholder in any corporation or association, nor assume, redeem, secure, or pay any indebtedness, or pretended indebtedness alleged to be due by the state of Mississippi to any person, association, or corporation whatsoever, claiming the same as owners, holders, or assignees of any bond or bonds, now generally known as "Union Bank" bonds and "Planters' Bank" bonds.

SEC. 279. All writs, actions, causes of action, proceedings, prosecutions, and rights of individuals and bodies corporate, and of the state, and *charters of incorporation shall continue.*

B.

LAWS CREATING THE CONTRACT IN QUESTION.

An Act to incorporate the Mobile and Northwestern Railroad Company, approved July 20, 1870.

SECTION 21. *Be it further enacted*, that in consideration of the construction of the Railroads provided for herein, and of the great benefit which the State will receive in the development of its agricultural resources by means of said Railroads as works of internal improvement, and also of the increased value which will thereby be added to the property of the State, thus enabling the State to greatly increase its revenue without additional and burdensome taxation upon the people, the State hereby agrees with said Company (and which agreement is irrepealable), that all taxes to which said Company shall be subject for the period of thirty years, are hereby appropriated and set apart, and shall be applied to the payment of the debts and liabilities which the said Company may have incurred in the construction of said road, or for money borrowed by said Company upon lands or otherwise, to be used in constructing said road, or paying debts incurred by said Company in constructing the same; and it shall be the duty of the Tax Collector in every county in each and every year, to give to said Company a receipt in full for the amount of said taxes upon receiving from said Company an affidavit made by the President or Cashier of said Company, that the amount of said taxes have actually and in good faith been paid and applied by said Company during the year, in payment of the debts incurred, or money borrowed as aforesaid, and which receipt so given shall be in full of all taxes, county, state, and municipal,

to which said Company shall be subject; *Provided, however*, That whenever the profits of said Company shall enable it to declare and pay to the stockholders an annual dividend of eight per cent. upon its capital stock over and above the payment of its debts and liabilities, then the appropriation of the taxes aforesaid shall cease, and said taxes shall be paid by said Company to the Tax Collector, to be by him paid over as required by law. (Laws Mississippi, 1870, ch. 104, p. 268.)

ACT APPLYING SECTION 21 TO THE MEMPHIS AND VICKSBURG RAILROAD COMPANY AND OTHERS.

An Act supplemental to the Acts of incorporation of certain Railroad Companies, approved August 8, 1870.

SECTION 1. *Be it enacted by the Legislature of the State of Mississippi*, That the provisions of the twenty-first section of an Act entitled, "An act to incorporate the Mobile and Northwestern Railroad," be, and they are hereby made to apply to the following Railroad Companies: the Memphis and Vicksburg Railroad; the Vicksburg, Yazoo Valley, and Grenada Railroad; the Canton and Vicksburg Railroad; the Natchez and Jackson Railroad; the Meridian and Red River Railroad; the Ship Island, Mississippi City, and Paducah Railroad; the Elyton and Aberdeen Railroad; the Grenada, Louisville, and Meridian Railroad; the Greenville and Rolling Fork Railroad; and the charters of said Companies are hereby amended so as to confer upon said Companies all the rights, privileges, immunities, and franchises granted by the Act of incorporation of the said Mobile and Northwestern, embraced in the twenty-first section thereof.

SEC. 2. *Be it further enacted*, That this Act take effect and be in force from and after its passage. (Laws Mississippi, 1870, ch. 113, p. 327.)

C.[1]

I. List of charters containing agreement for appropriation or commutation of taxes as embodied in section 21 of Act of July 20, 1870.

1870. Mobile and Northwestern Railroad Company, Laws 1870, pp. 255, 268.
" Memphis and Vicksburg Railroad Company, Laws 1870, p. 327.
" Vicksburg, Yazoo Valley, and Grenada Railroad Company, *Ib.*
" Canton and Vicksburg Railroad Company, *Ib.*
" Natchez and Jackson Railroad Company, *Ib.*

[1] Regular sessions of the Legislature of Mississippi were held annually between 1870 and 1878, inclusive, and thereafter beginning with the year 1880 were held biennially.

1870. Meridian and Red River Railroad Company, *Ib.*
" Ship Island, Mississippi City, and Paducah Railroad Company, *Ib.*
" Elyton and Aberdeen Railroad Company, *Ib.*
" Grenada, Louisville, and Meridian Railroad Company, *Ib.*
" Greenville and Rolling Fork Railroad Company, *Ib.*
1871. Meridian, Red River and Texas Railroad Company, Laws 1871, pp. 119, 129.
" Artesia, Starkville and Grenada Railroad Company, Laws 1871, pp. 138, 147.
" Columbus, Fayette and Decatur Railroad Company, Laws 1871, pp. 187, 188.
" Lexington Branch Railroad Company, Laws 1871, pp. 189, 199.
" Elyton, Corinth and Tennessee River Railroad Company, Laws 1871, pp. 202, 218.
" Yazoo City, Raymond and Crystal Springs Railroad Company, Laws 1871, pp. 228, 236.
" Vicksburg, Pensacola and Ship Island Railroad Company, Laws 1871, pp. 237, 250.
" Ripley Railroad Company, Laws 1871, pp. 268, 279.
1872. An act to encourage the introduction of Machinery and the establishment of Factories, etc., Laws 1872, p. 65.
" Arkansas City and Grenada Railroad Company, Laws 1872, pp. 347, 360.
" Corinth, Kossuth and Kosciusko Railroad Company, Laws 1872, pp. 335, 346.
" Corinth and Nashville Railroad Company, Laws 1872, p. 283.
" Gibson and Rolling Fork Railroad Company, Laws 1872, pp. 294, 297.
" Grenada, Houston, and Eastern Railroad Company, Laws 1872, pp. 286, 291.
" Helena, Water Valley, and Eastern Railroad Company, Laws 1872, pp. 299, 311.
" Mississippi River and Sardis Railroad Company, Laws 1872, pp. 380, 386.
" Memphis, Oxford, and Meridian Railroad Company, Laws 1872, pp. 369, 379.
" Natchez and Brookhaven Railroad Company, Laws 1872, pp. 362, 367.
" New Orleans, Baton Rouge, and Vicksburg Railroad Company, Laws 1872, pp. 246, 255.
" New Orleans and Northeastern Railroad Company, Laws 1872, p. 314.

1872. Vicksburg, Yazoo Valley, and Grenada Railroad Company, Laws 1872, pp. 319, 335.
1873. Mississippi Mills, Laws 1873, p. 212.
" Stonewall Cotton Factory, Laws 1873, p. 212.
" Perkinsville Manufacturing Company, Laws 1873, p. 303.
" Wanneeta Mills and Magnolia Mills, Laws 1873, p. 367.
" Ashland Railroad Company, Laws 1873, pp. 518, 520.
" Ashland, Holly Springs and Chulahoma Railroad Company, Laws 1873, pp. 596, 597.
" Grenada, Louisville and Meridian Railroad Company, Laws 1873, pp. 513, 514.
" Holmes County Central Railroad Company, Laws 1873, pp. 520, 530.
" Liberty and Woodville Railroad Company, Laws 1873, pp. 499, 509.
" Mississippi City and Helena Railroad Company, Laws 1873, pp. 531, 540.
" Mobile and Little Rock Railroad Company, Laws 1873, pp. 576, 579.
" Pascagoula and Jackson Railroad Company, Laws 1873, pp. 496, 499.
" Savannah and Memphis Railroad Company, Laws 1873, pp. 594, 595.
" West and East Railroad Company, Laws 1873, pp. 479, 488.
" Yazoo City, Yazoo Valley Railroad Company, Laws 1873, pp. 543, 553.
1878. Natchez, Jackson and Columbus Railroad Company, Laws 1878, pp. 233, 234.
1880. Jackson, Yazoo City and Arkansas City Railroad Company, Laws 1880, pp. 228, 234.
" Greenville, Columbus and Birmingham Railroad Company, Laws 1880, pp. 246, 247.
1882. Gordon Cotton Mills Company, Laws 1882, pp. 574, 576.
" Port Gibson Cotton Mills, Laws 1882, pp. 591, 596.
" Vicksburg and Mississippi Railroad Company, Laws 1882, pp. 896, 916.
" Louisville, New Orleans and Texas Railway Company, Laws 1882, pp. 1011, 1013.
1884. Louisville, New Orleans and Texas Railway Company, Laws 1884, p. 936.

II. List of charters granting exemptions from taxation.

1870. Whitworth Female College, Laws 1870, pp. 380, 381.
" Macon Male School, Laws 1870, pp. 401, 402.

1870. Attala County Agricultural and Mechanical Association, Laws 1870, pp. 457, 459.
1873. Educational Society of South Mississippi and East Louisiana, Laws 1873, pp. 429, 433.
" Baldwyn Female College, Laws 1873, p. 435.
" University of Columbus, Laws 1873, pp. 438, 439.
" Plowman and Agricultural Society, Laws 1873, p. 462.
1874. Abbeville Female College, Laws 1874, p. 158.
1877. Manufacturing Companies, Laws 1877, p. 72.
1878. Port Gibson, Utica and Crystal Springs Railroad Company, Laws 1878, pp. 463, 472.
" Brandon Street Railway Company, Laws 1878, pp. 484, 487.
1880. All railroads while in process of construction, Laws 1880, pp. 19, 86.
" Lea Female College, Laws 1880, pp. 291, 293,
" Meridian and Aberdeen Fair Grounds, Laws 1880, p. 633.
1882. Purchasers of railroads at foreclosure, on incorporation, Laws 1882, pp. 47, 48.
" Delta Land and Manufacturing Company, Laws 1882, pp. 533, 537.
" Mississippi Improvement and Manufacturing Company, etc., Laws 1882, pp. 545, 550.
" Mississippi Mining, Milling, etc., Company, Laws 1882, pp. 555, 558.
" Star Mining, Milling and Manufacturing Company, Laws 1882, pp. 559, 561.
" Marshall Mills, Laws 1882, pp. 561, 564.
" D. Mayer Agricultural and Manufacturing Company, Laws 1882, pp. 564, 565.
" Hope Oil Mill, etc., Company, Laws 1882, pp. 570, 573.
" Warren Cotton Mills Company, Laws 1882, pp. 587, 588.
" Luxapalila Manufacturing and Mining Company, Laws 1882, pp. 588, 591.
" Cooper's Wells Company, Laws 1882, pp. 599, 602.
" Meridian Mills, Laws 1882, pp. 606, 608.
" Blue Mountain Academy, Laws 1882, pp. 667, 668.
" Louisville Male and Female Seminary, Laws 1882, p. 670.
" Palo Alto Academy, Laws 1882, pp. 675, 676.
" Yazoo and Mississippi Valley Railroad Company, Laws 1882, pp. 838, 847.
" Memphis and New Orleans Railroad and Levee Company, Laws 1882, pp. 874, 883.
" Canton, Aberdeen and Nashville Railroad Company, Laws 1882, pp. 1001, 1009.

1882. Memphis, Selma and Brunswick Railroad Company, Laws 1882, p. 1022.
" Gulf and Ship Island Railroad Company, Laws 1882, pp. 849, 861.
" Birmingham and North-Western Railroad Company, Laws 1882, pp. 1040, 1049.
" Tennessee and Mississippi Rivers Railroad Company, Laws 1882, pp. 989, 1000.
" Vicksburg and North-Eastern Railroad Company, Laws 1882, pp. 1015, 1018.
" Meridian, Brookhaven and Natchez Railroad Company, Laws 1882, pp. 1049, 1064.
" Helena, Sardis, Pontotoc and Birmingham Railroad Company, Laws 1882, pp. 885, 895.
" Mississippi Mexican Gulf Railroad Company, Laws 1882, pp. 961, 974.
" Alabama and Mississippi Railroad Company, Laws 1882, pp. 863, 870.
" Mississippi and Arkansaw Railroad Company, Laws 1882, pp. 933, 942.
" Meridian, Winona and Helena Railroad Company, Laws 1882, pp. 943, 959.
" Mississippi, Alabama and Georgia Railway Company, Laws 1882, pp. 975, 988.
" Pass Christian City Railroad Company, Laws 1882, pp. 818, 821.
" City Railroad of Columbus, Laws 1882, pp. 822, 824.
" Georgia Pacific Railway Company, Laws 1882, pp. 824, 826, 834, 837.
1884. Mississippi State Fair Association, Laws 1884, pp. 827, 829.
" Sunflower Navigation Company, Laws 1884, pp. 859, 862.
" Hunt and Huddleston College Faculty Association, Laws 1884, pp. 874, 876.
" Lea Female College, Laws 1884, pp. 878, 879.
" Maury Institute, Laws 1884, pp. 880, 881.
" Grenada Collegiate Institute, Laws 1884, pp. 881, 883.
" Caledonia Branch Railroad Company, Laws 1884, pp. 888, 895.
" Warrior Coal Fields Railroad Company, Laws 1884, pp. 895, 901.
" Tombigbee Railroad Company, Laws 1884, pp. 901, 907.
" Moss Point, Scranton and East Pascagoula Railroad Company, Laws 1884, pp. 911, 915.
" Macon and Tuscaloosa Railroad Company, Laws 1884, pp. 915, 916.

1884. Mississippi River and Deer Creek Railroad Company, Laws 1884, p. 918.
" Memphis, Oxford and Columbus Railway Company, Laws 1884, pp. 919, 920.
" Port Gibson & Alabama Railroad Company, Laws 1884 pp. 922, 934.
" Terry, Brandon and Northeastern Railroad Company, Laws 1884, pp. 936, 937.
" Helena, Memphis and New Orleans Railroad Company, Laws 1884, pp. 937, 938.
" West Point Street Railway Company, Laws 1884, pp. 941, 944.
" Tombigbee and Grand Trunk Railroad Company, Laws 1884, p. 950.
" Natchez and Mobile Railroad Company, Laws 1884, pp. 951, 953.
" Front and Asylum Street Railway Company, Laws 1884, pp. 955, 956.
" Mississippi River and Mexican Gulf Railroad Company, Laws 1884, pp. 957, 963.
" Rodney, Jackson and Tuscaloosa Railroad Company, Laws 1884, pp. 968, 969.
" Arkansas City, Winona and Eastern Railway Company, Laws 1884, pp. 969, 971.
" Mississippi River and Eastern Railroad Company, Laws 1884, pp. 975, 986.
" Tallahatchie Valley Railroad Company, Laws 1884, pp. 987, 992.
" New Orleans and Northwestern Railway Company, Laws 1884, pp. 994, 1004.
" Meridian and Brunswick Railroad Company, Laws 1884, pp. 1005, 1013.
" Helena, Water Valley, Aberdeen and Birmingham Railroad Company, Laws 1884, pp. 1014, 1023.
1886. Kansas City, Memphis and Birmingham Railroad Company, Laws 1886, pp. 191, 200.
" Memphis, Birmingham and Atlantic Railroad Company, Laws 1886, pp. 203, 207.
" Pensacola and Memphis Railroad Company of Mississippi, Laws 1886, pp. 209, 221.
" Vicksburg, Yazoo-Delta and North Eastern Railway Company, Laws 1886, pp. 222, 227.
" Hill City Street Railway Company, Laws 1886, pp. 232, 235.
" Mississippi and Louisiana Bridge and Railroad Company, of Natchez, Mississippi, Laws 1886, pp. 237, 244.

1886. Port Gibson Female College, Laws 1886, p. 634.
" Cooper Normal College, Laws 1886, pp. 726, 727.
" Pittsboro Male and Female College, Laws 1886, pp. 734, 735.
1888. Macon, Tuscaloosa and Birmingham Railroad Company, Laws 1888, pp. 490, 499.
" Helena, Tupelo and Decatur Railroad Company, Laws 1888, pp. 500, 508.
" Brookhaven, Columbia and Mobile Railroad Company, Laws 1888, pp. 508, 509.
" Enterprise Street Railway Company, Laws 1888, p. 518.
" Vicksburg Electric Street Railway Company, Laws 1888, pp. 522, 523.
" Mississippi and Gulf Railroad Company, Laws 1888, pp. 542, 546.
" Mississippi Southern Railway Company, Laws 1888, pp. 548, 557.
" Columbus, Fulton and Eastport Railroad Company, Laws 1888, pp. 558, 563.
" Greenville and Durant Railroad Company, Laws 1888, pp. 563, 569.
" Waynesboro, Pascagoula and Gulf Coast Railroad Company, Laws 1888, pp. 570, 575.
" Greenville, Egypt Ridge and Bogue Phaliah Railway Company, Laws 1888, pp. 584, 591.
" Meridian Cotton Mills, Laws 1888, pp. 595, 596.
" Natchez Hotel, Laws 1888, p. 614.
" Deasonville High School, Laws 1888, p. 628.
" Liberty Male and Female College, Laws 1888, pp. 630, 631.
" Tombigbee Normal Institute, Laws 1888, p. 632.
" Montrose High School, Laws 1888, pp. 635, 636.
" Gulf Port Dental College, Laws 1888, p. 638.
" Mt. Carmel Normal College, Laws 1888, pp. 639, 640.
1890. Millsaps College, Laws 1890, pp. 553, 555.
" Pickens High School, Laws 1890, p. 561.
" Harper's Baptist College, Laws 1890, pp. 563, 564.
" Pleasant Hill High School, Laws 1890, pp. 569, 570.
" Hebron High School, Laws 1890, pp. 570, 571.
" Bellefontaine Male and Female High School, Laws 1890, p. 574.
" Saltillo High School, Laws 1890, p. 577.
" Waynesboro Normal Institute and College, Laws 1890, pp. 581, 582.
" Old Myrtle Normal College, Laws 1890, pp. 583, 584.

1890. Starkville Street Railway Company, Laws 1890, pp. 655, 660.
" Nashville and Mississippi Delta Railroad Company, Laws 1890, pp. 682, 687.
" Mississippi River, Alabama and Chattanooga Railroad Company, Laws 1890, pp. 703, 713.
" Greenville, Nashville and Chattanooga Railway Company, Laws 1890, pp. 732, 741.
" Columbus and Fulton Railroad Company, Laws 1890, pp. 743, 751.
" Alabama, Mississippi and Western Railroad Company, Laws 1890, pp. 751, 756.
" South Mississippi Railroad Company, Laws 1890, pp. 759, 767.
" Yazoo Delta Central Railway Company, Laws 1890, pp. 769, 778.

ANNOTATED CODE 1892, SEC. 2956 (Powers of Mayors and Aldermen of Cities and Towns):

Thirty-first.—To aid and encourage the establishment of manufactories, gas-works, water-works, and other enterprises of public utility other than railroads, within the corporate limits, by exempting all property used for such purposes from *municipal taxation* for a period not longer than ten years.

REVENUE LAW OF 1890.

(Laws 1890, c. 2, p. 9.)

SECTION 1. * * * Cities and towns are prohibited from levying or collecting any other tax on banks or on solvent credits owned by individuals or corporations, greater than 75 per cent. on the State tax.

SEC. 3 (p. 11). That the State tax for the year 1890 is hereby fixed and levied at three and one-half mills on the dollar, and for the year 1891 three mills for general purposes. * * *

D.

REFERENCES TO SOME STATUTES OF MISSISSIPPI, PRIOR TO 1869, RESERVING POWER TO TAX CORPORATIONS.

The legislature expressly reserved power to impose taxes in the following charters:

1833. Commercial and Rail Road Bank of Vicksburg, Laws 1833, p. 129.
1836. Commercial Bank of Rodney, Laws 1836, p. 137.
" Commercial Bank of Manchester, *id.*, p. 142.
" Commercial Bank of Columbus, *id.*, p. 152.

1836. Tombigbee Rail Road Company, *id.*, p. 227.
" Aberdeen and Pontotoc Railroad and Banking Company, *id.*, p. 241.
" Tallahatchie Rail Road Company, *id.*, p. 283.

In the following instances the charters provided that the capital stock of the respective corporations should "from time to time, as the Legislature may hereafter direct, be subject to be taxed annually." * * *

1833. Grand Gulf Rail Road and Banking Company, Laws 1833, p. 147.
1836. Mississippi and Alabama Rail Road Company, Laws 1836, p. 165.
" Lake Washington and Deer Creek Rail Road and Banking Company, *id.*, p. 215.

The following acts expressed in varying language the same reservation of power to the legislature:

1833. Protection Insurance Company, Laws 1833, p. 84.
" West Feliciana Railroad Company, *id.*, p. 153.
1836. Gainsville and Narkeetah Railroad Company, Laws 1836, p. 86.
" Mississippi Springs Railroad Company, *id.*, p. 296.
1850. Yazoo and Houston Railroad Company, Laws 1850, p. 352.
1859. Warren Insurance Company, Laws 1859, p. 122.
1862. Columbus Life and General Insurance Company, Laws 1862, p. 295.

In the following charters the legislature expressly declared that the property of the respective corporations should be "subject" or "liable" to taxation:

1836. Commercial Bank of Natchez, Laws 1836, p. 252.
1852. Columbus Life and General Insurance Company, Laws 1852, p. 199.
1854. Memphis and Charleston Railroad Company, Laws 1854, p. 86.
1865. Hernando Mutual Insurance Company, Laws 1865, p. 314.
" Pearl River Manufacturing Company, *id.*, p. 381.

The legislature of 1866–67 (the last session held before the adoption of the Constitution of 1869) in the charter of the Memphis, Holly Springs and Mobile Railroad Company expressly reserved to the state the power to levy income taxes upon the travel on the railroad (Laws 1866–67, p. 637), and reserved the same power in respect to the New Orleans, Mobile and Chattanooga Railroad Com-

pany (*id.*, p. 344). In the cases of the Bradford Machinery Company (*id.*, p. 473) and the Hashuqua Manufacturing Company (*id.*, p. 712) provisions were inserted declaring that the property and effects of the companies should remain liable to taxation.

E.

STATUTES DISTINGUISHING CITY TAXATION FROM STATE AND COUNTY TAXATION.

In the following statutes the legislature of Mississippi expressly exempted, or authorized the exemption of, corporations from city taxation:

1870. Jackson Street Railway, Laws 1870, p. 560.
1873. Natchez Street Railway, Laws 1873, p. 346.
1874. Corinth Street Railway, Laws 1874, p. 236.
" Pass Christian Street Railway, *id.*, p. 196.
1878. Brandon Street Railroad Company, Laws 1878, p. 487.
1882. Pass Christian City Railroad Company, Laws 1882, p. 821.
" City Railroad of Columbus, *id.*, p. 824.
1884. Mississippi State Fair Association, Laws 1884, p. 829.
" West Point Street Railway Company, *id.*, p. 944.
" Front and Asylum Street Railway Company, *id.*, p. 956.
1886. Hill City Street Railway Company, Laws 1886, p. 235.

In the following instances the exemption was from state and county taxation, leaving the corporations subject to city taxation:

1871. Levee Board, District No. 1, Laws 1871, p. 54.
" Sardis Agricultural and Mechanical Society, *id.*, p. 636.
1884. Helena, Memphis and New Orleans Railroad, Laws 1884, p. 938.
1886. Cooper Normal College, Laws 1886, p. 727.
1888. Montrose High School, Laws 1888, p. 636.
1890. Harper's Baptist College, Laws 1890, p. 564.
" Pleasant Hill High School, *id.*, p. 570.
" Bellefontaine High School, *id.*, p. 574.

In the following acts exemptions were granted from county and municipal taxes:

1888. Deasonville High School, Laws 1888, p. 628.
" Enterprise Street Railway Company, *id.*, p. 518.
" Liberty Male and Female College, *id.*, p. 631.
1890. Pickens High School, Laws 1890, p. 561.
" Saltillo High School, *id.*, p. 577.
" Starkville Street Railway Company, *id.*, p. 660.

The legislature of 1888 saw fit to exempt a hotel in Natchez from payment of county taxes only (Laws 1888, p. 614).

ANNOTATED CODE 1892.

3794a. *Clerk to make copies, etc.* The clerk shall make two fair copies of each roll, and three in counties having two judicial districts, as examined and corrected, if it be corrected, one of which he shall transmit to the auditor of public accounts on or before the first Monday of October following; the other he shall deliver to the tax collector on or before the first day of October, and the original he shall retain and carefully preserve as a public record in his office.

3801. *Collection of taxes.* On receipt of the assessment rolls the collector shall immediately proceed to collect the taxes, adding the county tax due by each person to his state tax, and collecting all together; and it shall be the duty of every person assessed to pay his taxes to the collector on or before the fifteenth day of December.

3802. *Taxes collected by distress.* All taxes remaining unpaid on the fifteenth day of December, shall immediately be collected by the collector, by distress and sale of any personal property liable therefor; and such sale shall take place at the court-house door, unless the property distrained be too cumbrous to be removed; and five days' notice of the time and place of sale shall be given by advertisements put up in three public places in the county, one of which shall be at the court-house door; and the collector shall be allowed to collect and retain in addition to the taxes, all necessary expenses of removing and keeping the property distrained.

No. 35.
Appx. to Br. of Gulf Ins. Co. Receiver
Mayes v Yale for P. E. (rehear
Filed Mar. 18, 1901.

Office Supreme Court U.S.
FILED
MAR 18 1901
JAMES H. MCKENNEY,

Supreme Court of the United States.

OCTOBER TERM, 1900.

NO. 35.

THE VAZOO AND MISSISSIPPI VALLEY RAILROAD COMPANY ET AL.,
Plaintiffs in error,
vs.
WIRT ADAMS, State Revenue Agent.

In error to the Supreme Court of the State of Mississippi.

OPINION OF THE SUPREME COURT OF THE STATE OF MISSISSIPPI IN WIRT ADAMS, STATE REVENUE AGENT, v. TOMBIGBEE MILLS, DECIDED FEBRUARY 18, 1901.

WIRT ADAMS, State Revenue Agent,

v.

TOMBIGBEE MILLS.

WHITFIELD C. J :—

The appellee was chartered March 27th 1887, under the general statute of this State approved March 9th 1882, entitled " an Act to encourage factories in this State, and to exempt them from taxation", section one of which is as follows :

" SECTION I. Be it enacted by the Legislature of the State of Mississippi, That to encourage the introduction of factories in this State, the machinery used for the manufacture of cotton or woolen goods, yarns or fabrics, composed of these or other materials, or for the making of all kinds of machinery or implements of husbandry, or all other things or articles not prohibited by law, the manufactured goods and the material used therefor, the buildings in which the machinery is located and ground upon which situated or which may be within the necessary enclosure around such buildings, also all ware-houses and other storehouses used exclusively by the company in its business and adjacent to the factory and its enclosures, and also the offices of the officers and employees adjacent to and located on the grounds of such factory, and used by them alone, (but shall not apply to any railroad shops or machine works, which are the property of railroads), and no other property, shall be and is hereby declared to be exempt from all taxation, State, county and municipal, for the period of ten years from the time such factory is completed and in operation ".

It will be carefully noted that this is not a special Act, attempting to grant a special exemption to a particular corporation as was the case in Y. & M. V. R. R. Co. v. Adams, 77 Miss. 194. Nor is it

a statute applicable to all corporations of the same class even, constructing such factories whilst subjecting such factories to be constructed by individuals to taxation. It is a broad general statute, applicable to the particular kind of property specified—cotton factories to be built,—whether owned by corporations or individuals.

In Y. & M. V. R. R. Co. v. Adams 77 Miss. 194, we said:

"Mississippi Mills v. Cook decided that the property of private corporations for pecuniary profit was and should remain subject to taxation. It expressly held that, while an exemption might be granted, yet it might at any time be repealed by the legislature, and further, that no exemption could be granted to any private corporation for pecuniary profit by a special act extending a special exemption to that special corporation alone; but that, in order to make any such exemption valid, it must be extended to all corporations for pecuniary profit of the same class and in the same situation. And the precise exemption asserted in that case was asserted distinctly under the acts of April 1, 1872, and of April 17, 1873, amendatory thereof, set out at pages 42 and 43 of 56 Miss. The Mississippi Mills did not claim that it had a valid exemption by virtue of a special act granting such special exemption to the Mississippi Mills alone but that it had such exemption in common with all other factories similarly situated by virtue of said general law. The exemption set up here under the twenty-first section of the Mobile & Northwestern charter is wholly different. The claim here is that this particular railroad is entitled to this special exemption, which it is conceded is not now, and never was, extended to all other railroads similarly situated in this state. And further, this exemption is irrepealable on its face, and the Mississippi Mills case decided that no irrepealable exemption was constitutional. It is certainly obvious from these considerations alone that Mississippi mills v. Cook is no authority to sustain the exemption set up here. It is further clear that the constitutionality, under the constitution of 1869, of a legislative grant of exemptions to private corporations for pecuniary profit if it embraced all of the same class —the property of individuals being at the same time taxed—was not argued, considered, or decided in Mississippi Mills v. Cook, but was conceded by the attorney general and the judges who wrote the majority opinions. One of the vices of the decision in Mississippi Mills v. Cook is that it did not hold that all the profit was required to be taxed by the terms of the constitution (sections 13, 20, art. 12) just as and when the property of individuals was. Instead of doing

this, the court decided that all such property was free from taxation, unless the legislature expressly subjected it to taxation, even though the property of private individuals was taxed, inverting the rule of the constitution. It was certainly an idle performance to declare, as the court did declare, that the whole effect of the constitutional provision was to render the property of private corporations for pecuniary profit liable to taxation. That every body knew, and to so limit the constitutional declaration was to emasculate it. More than 35 years had intervened between the previous constitution of the state and the constitution of 1869. When that previous constitution was adopted—in 1832—the state was young, and had had little experience with the grasping demands of corporations for grants of exclusive privileges; but the experience of more than 35 years had taught it wisdom in this regard—wisdom learned long prior by older commonwealths like California and Iowa, from the constitution of which latter state the provisions of the constitution of 1869 in question were doubtless borrowed; and so section 13 of article 12 was put in the organic law of the land, beyond the reach of legislative control, for the express purpose of formulating a fundamentally great line of public policy prohibiting any difference in the exercise of the taxing power between the property of individuals and the property of private corporations for pecuniary profit. The court in Mississippi Mills v. Cook 56 Miss. at pages 51, 52, looked too narrowly at the mere word "subject." It should have taken broadly the whole section into view, and deducted from all its terms the meaning of the provision. Judge Campbell in Beck v. Allen 58 Miss. 177, most wisely said: "Subtlety and refinement and astuteness are not admissible to explain away the expression of the sovereign will. The framers of the constitution and the people who adopted it must be understood to have intended the words employed in that sense most likely to arise from them on first reading them." This is the doctrine announced by Cooley and Story, and our construction of the meaning of section 13, to wit, that it required the property of private corporations for pecuniary profit to be taxed just as and when—"the same as"—the property of individuals so that one would not be exempt and the other taxed, is the identical construction placed upon the same words by the supreme court of the United States, of Alabama, Arkansas, California, Florida, and Iowa. We prefer now to distinctly allign ourselves with the supreme court of the United States on this import-

ant question, and over-rule the Mississippi Mills v. Cook in so far as it held that the property of private corporations for pecuniary profit was not, by Const. 1869, art. 12, sections 13, 20, expressly directed to be taxed just as the property of individuals. The decisions of the United States supreme court to which we refer are as follows : " Railroad Co. v. Palmes, 109 U. S. 248, 3 Sup. Ct. 193 ; Railway Co. v. Berry, 113 U. S. 475, 5 Sup. Ct. 529 ; People v. Cook, 148 U. S. 408, 13 Sup. Ct. 645 ; Keokuk & W. R. Co. v. Missouri, 152 U. S. 303, 310-312, 14 Sup. Ct. 592.

"The decisions of the state supreme courts to which we have referred are as follows : City of Davenport v. Chicago R. I. & P. R. Co. 38 Iowa 635 ; People v. McCreery, 34 Cal. 432 ; Fletcher v. Oliver, 25 Ark. 289 ; Palmes v. Railroad Co., 19 Fla. 231 (which collates the constitutions of Wisconsin, Missouri, Illinois, Kansas, Mississippi, Alabama, Arkansas, and Louisiana)."

We then reviewed the facts in that case and added :

" It will thus be clearly seen : (1) That the exemption claimed in Mississippi Mills v. Cook was one claimed under a general law applicable to all the factories in the state of the same class ; whereas, the exemption claimed here, to wit, the twenty-first section of the charter of the Mobile & Northwestern Railroad Company, is an exemption attempted to be granted to this special corporation, and not to all the other railroads in the state,—a special privilege under a special charter to a special corporation. (2) That the Mississippi Mills had established their factory, after the passage of the acts of 1872 and 1873, on the faith of those acts as a rule of property ; whereas, the Louisville, New Orleans & Texas Railroad Company never came into existence, as admitted by counsel for the railroad, until the 12th day of August, 1884, by the consolidation of the Baton Rouge Railroad and the Vicksburg & Memphis Railroad, after the construction of the road had been practically finished in July, 1884. (3) That the exemption claimed in Mississippi Mills v. Cook had no irrepealable feature ; Whereas, the exemption set up under the said twenty-first section is on its face irrepealable, and was so judicially declared to be, in the Lambert Case itself. (4) That the Louisville, New Orleans & Texas Railroad Company claims under charters granted in 1882 and 1884, asserting as its exemption this twenty-first section, the unconstitutionality of which, as violative of section 13 of article 12 of the constitution of 1869, was not only not considered, argued, or decided in Mississippi Mills v. Cook but which, by virtue of its irrepealable feature and its special

grant of an exclusive privilege to a special corporation, would have been condemned by the reasoning of that very case. (5) And not only is it true that the particular exemption claimed here, under this twenty-first section, was not argued or decided in Mississippi Mills v. Cook, but no other decision was ever rendered in this state in which the constitutionality of this twenty-first section was even involved, until McCulloch v. Stone, decided in 1886, four years after the grant of the charter of the Louisville, New Orleans & Texas Railroad Company. (6) From which it necessarily follows that that road was not built on the faith of any decision ever rendered in this state, up to the time of the grant of its charter, which even involved the constitutionality of said twenty-first section, and that the claim that it was organized or built on the faith of such decision, operating as a rule of property, is utterly unfounded and absurd. (7) That the Taylor Case was neither more nor less than a fictitious case, which misled the court by the misstatement of fact that the Vicksburg, Pensacola & Ship Island Railroad, was one of the constituent members of the Louisville, New Orleans & Texas Railroad and its charter was a constituent charter of that railroad, and that the Taylor Case is authority for nothing. (8) That the Lambert Case was decided at the March term, 1893, eleven years after, not before, the grant of the charter of the Louisville, New Orleans & Texas Railroad Company. And it is hence utterly incomprehensible to the legal mind how anybody could invoke that case, under the doctrine of *stare decisis*, as affording a rule of property to a company constructed under a charter granted before it was rendered. Such claim becomes more incomprehensible still when the further fact is recalled that the consolidation of the Louisville, New Orleans & Texas and Yazoo & Mississippi Valley into the present Yazoo & Mississippi Valley Railroad Company took place October 24, 1892, long before the decision in the Lambert Case.

"Let us get out of the realm of idle and reckless assertion into the realm of fact, and inquire more particularly and accurately exactly what was decided, even in the opinion of the court, which went far beyond the record, in Mississippi Mills v. Cook. The vice of that decision is that it looked exclusively to the word "subject" in section 13 art. 12, and failed to give force and effect to the words, "the same as that of individuals." When we say that the court's construction of the word "subject" attributed to it some supposed magical effect, we are simply reiterating the language of Chalmers, J. He said (56 Miss. 69)

"I find no such magic as my colleague in the words, 'shall be subject to taxation the same as that of individuals.' To me they have no meaning other than that which would be conveyed by the equivalent phrase, 'shall be treated or shall be dealt with the same as that of individuals.' This, and many similar phrases which might perhaps be suggested, convey one and the same idea, namely, that the lawgiver, in the imposition of taxes, shall know no difference between the property of individuals and that of corporations for pecuniary profit." The opinion of the court declares as its gist that section 13 was not mandatory upon the legislature to tax the property of private corporations for pecuniary profit whenever the property of individuals was taxed. It distinctly put the property of such private corporations, as to the power to tax them or exempt them, in a class by themselves, distinct from the class of individuals. In other words, it held that, although the property of individuals might be taxed, yet the property of such corporations might be at the same time exempted by the legislature from taxation; provided such exemption extended to all corporations of the same class in the state. We think it is perfectly manifest that the language "the same as the property of individuals", imperatively commanded the legislature, whenever they tax the property of private individuals, to tax also the property of such corporations, and under the same rules of equality and uniformity. It was well said by Campbell, J: that this provision of section 13 "sprang from the experience that corporations were in the habit of asking and obtaining legislative exemption from liability to taxation." 56 Miss. 56. That experience the state has acquired in the 35 years elapsing between the constitution of 1832 and the constitution of 1869, and that experience was wisely availed of to put an end to the grant of exclusive privileges to such corporations. It marked a new era in the history of corporate taxation in this state. It laid down a fundamentally new line of great public policy,—one that will be found essential to the preservation of the rights of the people, as is abundantly attested by the experience of older states dealing with such corporations. It is that feature of the decision, thus holding that this section 13 merely permitted the taxation of such corporations, but did not require that taxation whenever the property of individuals was taxed, and in just the same manner, in all respects, as the property of private individuals was taxed, which we now condemn and overrule. In no other respect do we interfere with the decision in that case. That case decided, that under the

constitution of 1869 the legislature had the power to select for exemption from taxation certain designated kinds of property, such as the agricultural implements of farmers, the tools of the mechanic etc. Such exemption of particular kinds of property, for reasons of public policy, the constitution allowed the legislature to grant, and, when granted, it applied to such property, whether owned by individuals or such corporations. And to permit such exemption was perfectly consistent with holding that said section mandatorily required the legislature to tax the property of such corporations whenever and just as it taxed the property of individuals. The vice of the holding of the court was in disregarding and repudiating the correlation by the constitution of the property of such corporations and the property of private individuals in the same category as to the right to tax and the duty to tax, and in declaring that under that section the legislature might put into operation a scheme of taxation which taxed property of all the private individuals in the state, and at the same time, at the will of the legislature, exempt all property of such corporations from any taxation whatever. The constitution plainly and clearly yoked together indissolubly the property of such corporations and the property of individuals, and subjected both alike to the same taxation, to be imposed under the same rules of equality or uniformity. The legislature might not exempt all the property of private corporations for pecuniary profit, and tax all the property of private individuals, but it might exempt certain selected kinds of property, in pursuance of a wise public policy, whether that property belonged to such corporations or to private individuals.

"One other observation. The case before us most emphatically does not present a claim to exemption under a charter identical with the charter in Mississippi Mills v. Cook, nor the case of any corporation which has acted on the faith of a decision construing a charter identical with the charter in the case of Mississippi Mills v. Cook, and which might thus be said to constitute, for such corporation, acting on it and investing its capital on it, a rule of property. It will be time enough to decide that precise question when that question shall be presented."

A case stronger than that is now before us, in this respect, that this Act of 1882, under which appellee was organized, applies not only to all corporations of the same class, but to the specified property in the hands of individuals or corporations. It does not select certain persons or certain corporations, and seek invidiously

to extend to them special privileges denied to all others. But in furtherance of a great and just public policy, always cherished in this State,—namely, the establishment of cotton factories for the consumption of the product on which our material wealth rests—it did, as under the constitution of 1869 it might do, selected certain kinds of property, whether owned by individuals or corporations, and exempted that selected property from taxation. Manifestly this exemption contained in the said Act of 1882, was valid, and it is clear it has never been repealed and it was not sought to be made irrepealable. This appellee never lost its exemption by consolidating with any other corporation. It has always retained "the precise corporate existence" it originally had. Its exemption was therefore continued by Sec. 181 of the constitution of 1890, subject to legislative repeal. But it has never been repealed. The legislation with respect to railroads, and cotton factories, under this Act as to this matter of exemption, is materially different as to the legislative repeal. Section 182 of the constitution of 1890 expressly authorized exemptions from taxation of manufactories and other new enterprises of public utility, for five years from the date of the charter, in the case of a corporation, and from the commencement of the work in the case of individual enterprises; but no such provision was made for railroads. And section 3744, subdivision (v) of the Code of 1892, passed in pursuance of section 182 of the constitution of 1890, provides for these exemptions as to manufactories of various kinds. Here is both constitutional and legislative recognition of the exemption in this case as still existing. For it would be obviously absurd for the Legislature to enact said subdivision (V) of section 3744, offering this five years exemption to cotton factories for the future, and at the same time repeal the sort of an exemption we have before us here. That would be "keeping the word of promise to the ear, but breaking it to the hope". Individuals and corporations would distrust as to the future if an exemption like this, validly granted, under general law, and on the faith of which appellee has invested its money, should be repealed. But a very different state of case existed as already pointed out, as to the exemption denied in Y. & M. V. R. R. Co. v. Adams 77 Miss 194. There the exemption was void in its origin being a special grant by a special Act, to a special corporation. And that exemption was repealed. It is not at all difficult to see the wisdom of the public policy which makes the discrimination between the exemption here, and that in Y. & M. V. R. R. Co.

v. Adams. Let it be specially noted that the discrimination is pointedly made in this very Act which while exempting the machinery shops &c of factories, expressly says it shall not apply to any Railroad shops or machine works which are the property of railroads.

But it is clear that the real estate assessed at $9000—being the tenement houses of the employees, is not exempt under the Act of 1882. It is not "located on the grounds of said factory".

And it is equally clear that the capital stock of said appellee is not exempt within and under said Act. Section 6 of the charter uses the word "property"—not the Act of 1882. The charter must square with the Act of 1882, the exemption must be such as that Act allows. *Strictissimi juris* is the rule, against the exemption and in favor of the State. The word "property" in the charter must be held to mean such property as is specified in the Act of 1882—the visible property therein named. But there is an agreement in the record that the entire capital stock has been all along invested in the said exempt plant, except $60000 of it, which it is also agreed has been invested all along in the purchase of the raw material, which is also exempted from taxation.

It is not here a question as to the power of the Legislature to exempt such visible property and tax the capital stock. But the question here is what did the Legislature intend to exempt?

We think it is clear that the capital stock should be estimated at its market value, and if that market value exceeds the amount of the capital stock so invested in the exempted plant and raw material,—(that is to say, in this case all the capital stock), the excess of the market value over the amount of capital stock so used to purchase the plant, and the raw material (in this case all the capital stock)—alone should be taxed. That is to say, all that can be taxed here, under the agreement in this record, would be the excess in value, of the market value of the capital stock over its par value. All this is matter of evidence. Clearly this was the legislative intent:—for otherwise the exemption would be one in name merely. To exempt the plant, and yet tax that amount of the capital stock used to purchase the plant, would be to give with one hand, and take back with the other. This is the doctrine of the State v. Simmons, 70 Miss. *supra*, and is thoroughly set forth in Thompson on Corporations vol. 2 sections 2813–2819—see especially section 2813.

For the reasons indicated the judgment is reversed and cause remanded.